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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,349

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John A. Gelardi

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1964

38235 7590 10/02/2008  
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EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

10/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,349	<b>Applicant(s)</b> GELARDI ET AL.	
	<b>Examiner</b> Luan K. Bui	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20,22-28,30-36 and 38-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20,22-28,30-36 and 38-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/4/08 (1 page)</u> .   | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 20, 22-28, 30-36 and 38-43 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 20, the phrase "a width greatly exceeding a height" is vague and indefinite because the term "greatly" has no clear meaning. How much bigger is considered as greatly exceeding? In claim 20, "each channel" should be replaced with --said at least one channel--. In claim 20, "at least one locking tab" should be replaced with --at least one of said pair of locking tabs--. In claim 27, the phrase "the the end cap"[sic] is incomplete. The phrases "each locking tab" in claim 40, "a given locking tab" in claim 41 and "a sleeve" and "each sleeve panel" in claim 42 appear double recitations of claim 20. In claim 43, the phrase "each sleeve panel" should be replaced with --said at least one convex sleeve-- because "at least one convex sleeve" is considered as one convex sleeve only. In claim 43, "each channel" should be replaced with --said at least one channel--. In claim 43, "at least one locking tab" should be replaced with --at least one of said pair of locking tabs--. In claim 43, "in the sleeve" should be replaced with --in the sleeve.--.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20-26, 40, 41 and 43 are finally rejected under 35 U.S.C. 102(b) as being anticipated by The Photographs of Lindt & Sprungli chocolate package (hereinafter Lindt & Sprungli). To the extent that the Examiner can determine the scope of the claims, Lindt & Sprungli discloses a product container comprising an elongated sleeve (pages 1-2) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including at least a pair of opposed resilient locking tabs extending from the peripheral edge of the opening for releasably engaging an end cap received within the opening with each locking tab having a width greater than a height which is considered equivalent to “greatly exceeding” and at least one pair of parallel edges; and an end cap (pages 3-5) adapted and configured for reception within the opening of the sleeve. The end cap having an outwardly extending rim and a ledge and the rim being adapted to abut the peripheral edge of the opening to limit the extent to which the end cap can extend into the sleeve and the ledge having a ledge face (adjacent the rim) being dimensioned and shaped to fit closely within the sleeve. The rim and the ledge together defining at least one channel therebetween and the at least one channel receiving at least one of the locking tab therein.

As to claim 43, Lindt & Sprungli discloses the sleeve includes at least one convex sleeve panel (one side of the sleeve) with an associated panel curvature.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 20, 22, 27, 28, 30-36, 38, 39, 41 and 42 are finally rejected under 35

U.S.C. 102(b) as anticipated by The Great Britain Patent No. 2 349 143 to Brain or, in the alternative, under 35 U.S.C. 103(a) as obvious over The Great Britain Patent No. 2 349 143 to Brain in view of Bouche (5,005,759) or The DE Patent No.1536131 to Landor. Brain discloses a product container comprising an elongated sleeve (14) defining an opening at one end, the opening defined by a peripheral edge and the sleeve including at least a pair of opposed resilient locking tabs (42) extending from the peripheral edge of the opening for releasably engaging an end cap received within the opening with each locking tab having a width greater than a height which is considered equivalent to “greatly exceeding” and at least one pair of parallel edges; and an end cap (12) adapted and configured for reception within the opening of the sleeve. The end cap having an outwardly extending rim and a ledge (50, 54, 56) and the rim being adapted to abut the peripheral edge of the opening to limit the extent to which the end cap can extend into the sleeve and the ledge having a ledge face being dimensioned and shaped to fit closely within the sleeve. The rim and the ledge together defining at least one channel (Figure 2) therebetween and the at least one channel receiving at least one of the locking tab therein.

To the degree it can be argued that the width of the locking tab of Brain is not greatly exceeding the height, Bouche shows a product container (1) comprising a pair of locking tabs (35-37) with each locking tab having a width greatly exceeding a height (Figure 1 & 3). Landor suggests a container in the embodiment of Figures 2 & 5, comprising at least a pair of locking tabs (between two slits 21 in Figure 2 or 35 in Figure 5) with each locking tab having a width greatly exceeding

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a height. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Bouche or Landor to modify the size of the locking tabs of Brain so the each locking tab comprises the width greatly exceeding the height for better securing the end cap to the sleeve and because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claims 23-26, 40 and 43 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 20 above, and further in view of The Photographs of Lindt & Sprungli chocolate package (hereinafter Lindt & Sprungli). Brain further fails to show the sleeve being defined by opposed first and second curved panels.

Lindt & Sprungli shows a product container comprising an elongated sleeve (pages 1-2) defined by opposed first and second curved panels. It would have been obvious to one having ordinary skill in the art in view of Lindt & Sprungli to modify the sleeve of Brain so the sleeve is defined by opposed first and second curved panels instead of the sleeve of Brain to allow the container for holding various type of products and because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

As to claim 43, Lindt & Sprungli shows at least one convex sleeve panel (one side of the sleeve) with an associated panel curvature.

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***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 20, 22-28, 30-36 and 38-43 are finally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 7,007,775 in view of Bouche (5,005,759) or The DE Patent No.1536131 to Landor or Lindt & Sprungli. The Patent claims most of the structural limitations of the claims in the instant patent application except for each of the locking tabs having a width greatly exceeding a height or the sleeve including at least one convex sleeve panel.

Bouche shows a product container (1) comprising a pair of locking tabs (35-37) with each locking tab having a width greatly exceeding a height (Figure 1 & 3). Landor suggests a container in the embodiment of Figures 2 & 5, comprising at least a pair of locking tabs (between two slits 21 in Figure 2 or 35 in Figure 5) with each locking tab having a width greatly exceeding a height. Lindt & Sprungli shows at least one convex sleeve panel (one side of the sleeve) with an associated panel curvature.

It would have been obvious to one having ordinary skill in the art in view of Bouche or Landor to modify the size of the locking tabs in the claims of the Patent so the each locking tab

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comprises the width greatly exceeding the height for better securing the end cap to the sleeve and because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

It would have been obvious to one having ordinary skill in the art in view of Lindt & Sprungli to modify the sleeve of the Patent so the sleeve comprises at least one convex sleeve panel to holding a different type of article.

### ***Response to Arguments***

Applicant's arguments filed on 7/25/2008 have been fully considered but they are not deemed to be persuasive.

Applicant's argument with respect to Lindt chocolate package is noted. This is not persuasive for the reason as set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb  
October 1, 2008

/Luan K. Bui/  
Primary Examiner  
Art Unit 3728